

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

OFFICE OF COMMISSIONER

Charles Kent
P. O. Box 1212
Canton CT 06019

CMRRR#70993220000200710507
& First Class Mail

IN RE: Charles Kent, M.T. - Petition No. 990217-029-001

FINAL MEMORANDUM OF DECISION

In accordance with Connecticut General Statutes Section 4-180, the attached Proposed Memorandum of Decision issued April 28, 2000, by Hearing Officer Donald H. Levenson, is hereby adopted as the final decision of the Commissioner of the Department Health in this matter. A copy of the Proposed Memorandum of Decision is attached hereto and incorporated herein.

5/19/00
Date

Joxel Garcia, M.D.
Commissioner



PHONE: (860) 509-7101 FAX: (860) 509-7111
410 CAPITOL AVENUE - MS#13COM, P.O. Box 340308, HARTFORD, CONNECTICUT 06134-0308
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STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
PUBLIC HEALTH HEARING OFFICE

Charles Kent, M.T.
P.O. Box 1212
Canton, CT 06019

Petition No. 990217-029-001

MEMORANDUM OF DECISION

Procedural Background

On January 25, 2000, the Department of Public Health ("the Department") issued a Notice of Hearing ("the Notice") and a Statement of Charges ("the Charges") against Charles Kent, Massage Therapist ("respondent"). H.O. Ehxs. 1, 2. The Charges alleged grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §20-206.¹ The Notice scheduled a hearing for March 7, 2000 and appointed this Hearing Officer to rule on all motions, and to recommend findings of fact and conclusions of law to the Commissioner of the Department. H.O. Exh. 2

Respondent failed to file an answer to the Charges within fourteen days from the date of the Notice. On March 3, 2000, the Department filed a Motion to Deem Allegations Admitted. H.O. Ex. 4.

On March 7, 2000, a hearing was held in accordance with Chapter 54 of the Connecticut General Statutes (the Uniform Administrative Procedure Act) and Conn. Agencies Regs. §§19a-9-1, et seq. Respondent failed to attend and was not represented by an attorney. The Department appeared and was represented by Attorney Joelle Newton. During the hearing, the Department's Motion to Deem Allegations Admitted was granted.

This Memorandum of Decision is based entirely on the record and sets forth this Hearing Officer's recommended findings of fact and conclusions of law, and proposed order.

¹ The Department incorrectly cites *Conn. Gen. Stat.* §20-206 for its authority to take disciplinary action against respondent. The correct citation is to *Conn. Gen. Stat.* §20-206c.

Allegations

First Count

1. In Paragraph 1 of the Charges, the Department alleges that respondent is, and has been at all times referenced therein, the holder of Connecticut massage therapist license number 001462.
2. In Paragraph 2 of the Charges, the Department alleges that in 1997, respondent was arrested for felony forgery, use of drug paraphernalia, and for illegally obtaining prescription drugs through fraud.
3. In Paragraph 3 of the Charges, the Department alleges that in 1997, respondent abused or utilized Percocet to excess.
4. In Paragraph 4 of the Charges, the Department alleges that respondent's abuse of Percocet has, does, and/or may, affect his practice as a massage therapist.
5. In Paragraph 5 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §20-206.²

Second Count

6. In Paragraph 6 of the Charges, the Department incorporates by reference the allegations set forth in Paragraphs 1 and 2 as if fully set forth.
7. In Paragraph 7 of the Charges, the Department alleges that in 1998, respondent was arrested and charged with driving under the influence.
8. In Paragraph 8 of the Charges, the Department alleges that in 1998, respondent abused or utilized alcohol to excess.
9. In Paragraph 9 of the Charges, the Department alleges that respondent's abuse of alcohol has, does, and/or may, affect his practice as a massage therapist.
10. In Paragraph 10 of the Charges, the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to *Conn. Gen. Stat.* §20-206.³

Findings of Fact

1. The Department made sufficient and reasonable efforts to effectuate notice to respondent of the pending charges. H. O. Exhs. 1-3.

² See footnote #1

³ See footnote #1.

2. Respondent failed to file an Answer.
3. The allegations contained in Paragraphs 1 through 10 are deemed admitted.
Tr. p. 5.

Discussion and Conclusions of Law

The Department bears the burden of proof by a preponderance of the evidence. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 101 S. Ct. 999, *reh'g denied*, 451 U.S. 9333 (1981); *Swiller v. Commissioner of Public Health*, 15 Conn. Law Rptr. No.16, 532 (January 29, 1996).

Section 20-206c of the General Statutes provides in pertinent part that:

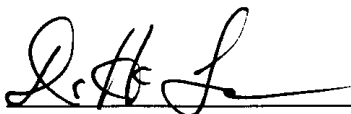
the department may take any action set forth in section 19a-17 if a . . . [massage therapist] fails to conform to the accepted standards of the massage therapy profession, including, but not limited to, the following: . . . abuse or excessive use of drugs, including alcohol, narcotics or chemicals

Section 19-17 of the General Statutes authorizes the Department to revoke a massage therapist's license upon a finding of good cause. Based on respondent's abuse and excessive use of alcohol and a narcotic, the risk he poses to potential future clients, and his failure to appear and contest the allegations made against him by the Department, the undersigned recommends that respondent's massage therapist license be revoked.

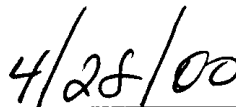
Order

Based upon the record in this case, the above findings of fact and conclusions of law, the undersigned respectfully recommends to the Commissioner that he revoke respondent's massage therapist license number 001462.

Respectfully submitted by:



Donald H. Levenson
Hearing Officer



Date

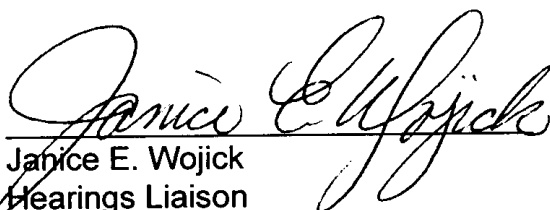
CERTIFICATION

I hereby certify that, pursuant to Connecticut General Statutes Section 4-180(c), a copy of the foregoing Final Decision was sent this 19th day of May, 2000, by certified mail, return receipt requested and First Class Mail to:

Charles Kent
P. O. Box 1212
Canton CT 06019

and by Interdepartmental Mail to:

Stanley K. Peck, Director
Legal Office
Department of Public Health
410 Capitol Avenue, MS#12LEG
P.O. Box 340308
Hartford, Connecticut 06134-0308



Janice E. Wojick
Hearings Liaison
Public Health Hearing Office